

Advisory Action

Applicant(s)

09/675,020

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MATSON ET AL.

Examiner

Deborah A Davis

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-25, 31 and 32.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

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04/29/04

Continuation of 5. does NOT place the application in condition for allowance because: Applicant arguments have not been found persuasive. 1. Applicant's argument for reconsideration has been acknowledged but not found persuasive. Applicant argue that the reference of Moring cannot anticipate claim 1, because Moring does not teach the vacuum fixture further defining a plurality of orifices connected to the interior chamber and opening at the top surface at locations corresponding to the array formation areas. In response to applicant's argument, elements 24 and 29 are a combination of the vacuum fixture, wherein vents in element 28 and the opening of the collection plate, element 26 define a plurality of orifices that correspond to the array formation area. With respect to the reference of Moring not teaching the discrete array formation areas formed of a flexible material and activated for immobilization of biorecognition materials, column 14, lines 41-52 discuss the array formation areas of the apparatus could serve as a solid phase interacting with a species in the liquid phase to immobilize such species upon contact. The array formation areas can be made of flexible material (see column 14, lines 47-52). Applicant argue that Mathus et al can not remedy the defect of Moring because Mathus et al does not teach nor suggests anything related to vacuum fixtures or areas activated for immobilization of materials. In response to applicant's argument, the Examiner relies on the reference of Mathus et al for the teaching of material thickness, height, flexural modulus and deflection temperature which is taught by Mathus et al (column 4, lines 55-65 and see final rejection for obviousness statement). Applicant argue that the reference of Mohan does not remedy the defect in Moring because Mohan neither teaches nor suggests the vacuum fixture defining a plurality of orifices connected to the interior chamber and opening at the top surface at locations corresponding to either the array formation areas or the bottoms of the wells. In response to applicant's argument, Moring taught this feature and the Examiner relied on the teachings of Mohan for a lid that has a plurality of caps with inlet/outlet ports and a temperature control element and a vacuum fixture (see previous rejection, page 6). Further, " In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986)." Therefore, for reasons aforementioned above and the previous final office action, rejection is maintained. .